IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.1773 of 2007

Mr.Vijay Singh Thakur Petitioner
Vs.
M/s.B.C.A. Garware Club House Respondent

Mr.R.M.Joshi for petitioner.

Mr.R.Narula with Mr.A.Dasgupta i/b. M/s.Jhangiani, Narula & Associates for respondent.

CORAM: B.H.MARLAPALLE, J.

November 28, 2007.

P.C.

. Heard Mr.Joshi, the learned counsel for the petitioner - workman. Mr.Narula appears for the respondent - Club. The petitioner is aggrieved by the award passed by the Labour Court in Reference IDA No.208 of 1988 by which his demand for reinstatement in service came to be rejected.

. The statement of claim filed by the workman challenged the termination order dated 15/5/1987 on the grounds of breach of the mandatory requirements of Section 25F and Section 25N of the Industrial Disputes Act, 1947. He further submitted that the extension of probationary period was illegal and he ought to have been confirmed in view of the applicability of the Model Standing Orders framed by

the State Government under the Industrial Employment (Standing Orders) Act, 1946.

. The reference was opposed by the employer pointing out that the workman was appointed by the appointment letter dated 26th August 1986 on probation for a period of six months and it was extendable from time to time at the discretion of the management. The probation period was extended initially upto 31st March 1987 and subsequently by letter dated 29th April 1987 till 30th June 1987 and finally on account of the assessment of his work and behaviour, the Managing Committee of the Club unilaterally decided to discontinue the service of the workman. It was further pointed out that the Club did not employ hundred or more workmen and, therefore, the Industrial Employment (Standing Orders) Act, 1946 was not applicable. At the same time it was also pointed out that the workman did not complete a service of 240 days in the preceding twelve months with reference to the order of termination dated 15th May 1987.

. The Tribunal on the assessment of the evidence led by both the parties came to the conclusion that

(a) the Club employed about 85 workmen and, therefore, the Model Standing Orders framed by the State Government under the Industrial Employment (Standing Orders) Act, 1986 were not applicable; (b) the workman did not put in 240 days of work during the preceding period of twelve months with reference to his date of termination i.e. 16th May 1987.

. The contentions of the management that it was not an "industry" and the workman was not a workman within the meaning of Section 2(s) of the I.D. Act came to be turned down by the Labour Court.

. The only point agitated by the learned counsel for the petitioner - workman before this Court is on the point of requirement for conducting an enquiry before the termination order was issued, as the said termination order was punitive. Reliance in this regard has been placed on the cross-examination of Shri Ashok Vasant Kanagadkai, who was working as Office Superintendent in the Club at the relevant time. In his cross-examination he admitted that the second party - workman was terminated from service due to the incident that had taken place on 4/5/1987. It is pertinent to note at this stage that the

workman has not challenged the findings of the Labour Court on the issue of applicability of Section 25F as well as Section 25N of the I.D. Act and the Model Standing Orders framed by the State Government.

. It is not in dispute that the petitioner was appointed on probation initially for a period of six months and it was extended from time to time upto 30th June 1987. He was issued a memo on 8th May 1987 referring to his own written apology dated 4th May 1987 regarding the incident that had taken place at the security cabin and in the said incident he had assaulted Shri V.R.Shah, co-employee causing severe physical injury on his face and for which he had to given medical treatment at St. George hospital. The said Mr.Shah also had lodged a complaint with the Azad Maidan Police Station. The termination order dated 15th May 1987 did not state anything about the termination being based on any such incident. The termination order stated that the Managing Committee of the Club had held a meeting on 11/5/1987 and in the said meeting it was unanimously decided that the petitioner's services should not be confirmed and that he should be terminated while on probation itself. The order of termination does not smack of

any punitive action. In the reference the Tribunal was required to examine the legality of the termination order on the requirements of Sections 25F and 25N of the I.D. Act and it recorded a finding that Section 25N was not applicable to the establishment and as the workman had not completed 240 days of service during the period of preceding 12 months with reference to the date of termination, the allegation of violation of the mandatory requirements

of Section 25F of the Act could not be proved.

. I am satisfied that the approach of the Labour Court in the impugned order was neither perverse nor patently erroneous and the termination order could not be said to be punitive on the facts and in the circumstances of this case only because of the admissions made by the Club's witness that the termination was due to the incident dated 4/5/1987. When the employer takes a decision regarding retention or discontinuation of an employee on probation, it is the management's right to assess the suitability of such probationer on the basis of over all performance as well as behaviour and if the management came to the conclusion that his behaviour was not satisfactory that by itself cannot be treated

to be a punitive action.

. Petition is rejected summarily.

(B.H.MARL